IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 407 OF 2006

Bala @ Vastad Digamber Shitole ....Applicant.

V/s

The State of Maharashtra ....Respondent.

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Mr. Mahesh Zanwar for the applicant.

Mr. Y.S. Shinde, for the respondent.

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**CORAM: V.M. KANADE, J.**

**DATE: 20TH FEBRUARY, 2006**

P.C.:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant was arrested in connection with the offence punishable under section 504 read with section 34 of the Indian Penal Code. The applicant and the deceased had a dispute in respect of the agricultural land. On the date of the incident, the son of the deceased was running on the common boundary wall of the agricultural land of the deceased and the accused. He accidently fell in the portion of the land which was owned by the applicant. The deceased, therefore, scolded his 8 years old son. The applicant and other accused, thereafter, assaulted the deceased. The

accused Nos. 2 and 3 caught hold of the deceased and the applicant No.1 gave two blows on the head of the deceased with the spade (Favda). As a result of the blow, the deceased died. The post-mortem notes indicate that skull of the deceased was fractured as a result of the blows which were given by the spade by the applicant.

3. The learned Counsel for the applicant vehemently urged that the incident had taken place all of a sudden and there was no intention to murder the deceased. He submitted that there was a discrepancy in the statements of two witnesses. One witness has stated that one blow was given on the head of the deceased, whereas the other witness has stated that two blows were given. He submitted that, therefore, at the most, the case would fall under section 304(II) of the Indian Penal Code.

4. I am unable to agree with the submissions made by the learned Counsel for the applicant. The applicant gave two blows on the head of the deceased with the spade which has resulted in the instant death of the deceased. As a result of the blow there was a fracture of the skull which clearly shows that the injury was sufficient in the ordinary course of nature

to cause death. No case, therefore, is made out for grant of bail. Application for bail is, therefore, rejected.

V.M. KANADE, J.